

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 29 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Exchange Carriers' Rates,)
Terms, and Conditions for Expanded) CC Docket No. 93-162
Interconnection for Special Access)
)
To: Chief, Common Carrier Bureau)

**COMMENTS ON BELL ATLANTIC'S PETITION FOR CLARIFICATION
BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services ("ALTS"), pursuant to §1.51 of the Commission's Rules, hereby comments on Bell Atlantic's Petition for Clarification of the Supplemental Designation Order and Order to Show Cause in this docket that was released on May 31, 1994 ("Supplemental Designation Order").

**BELL ATLANTIC'S PETITION SHOULD BE DENIED BECAUSE
THERE IS NO AMBIGUITY OR ERROR IN THE BUREAU'S DECISION.**

Bell Atlantic is petitioning for clarification because, according to Bell Atlantic, the Supplemental Designation Order (Petition at 1-2):

"erroneously states that ICB arrangements are common carrier offerings and that, '[o]nce sufficient knowledge is gained about the costs of the service, the Commission requires that the ICB rates be converted to averaged rates applicable to all customers.' The Bureau also asserts that ICB rates are 'generally available' if tariffs with those rates are filed. These are misstatements of Commission policy, as recently confirmed by the U.S. Court of Appeals."

No. of Copies rec'd
List ABCDE

4

Bell Atlantic's petition should be rejected because: (1) it misconstrues the D.C. Circuit's decision in Southwestern Bell Telephone Co. v. FCC (decision issued April 4, 1994, in No. 91-1416); (2) it disregards the important factual differences between the dark fiber that was at issue in Southwestern Bell and the quite ordinary ICB services that are the subject of the Supplemental Designation Order; and (3) it fails to quote all the relevant language of the Bureau's decision.

Contrary to the implication created in Bell Atlantic's petition, the D.C. Circuit's Dark Fiber decision did not hold that ICB offerings could never qualify as common carrier services. Rather, the D.C. Circuit rejected only a per se rule that the mere filing of ICB contracts with the Commission is sufficient to demonstrate that the services are held out on a common carrier basis.

Second, the Dark Fiber decision involved a unique situation where optical fiber was being installed without electronics by four of the seven regional Bell Holding Companies. By contrast, the Supplemental Designation Order involves commonplace activities: the labor and material that are required in order to prepare central office space for equipment installation.

Finally, the full text of the Bureau's decision amply demonstrates that the Bureau was not trying to hand down a rule for application to all ICB offerings, but instead was only

addressing the typical situation in which ICB offerings become common carrier services after having been held out to all similarly-situated customers (Supplemental Designation Order at 7):

"In the telecommunications industry, carriers typically develop specific charges appearing in generally available tariffs based on averaged costs. Pricing access services on an individual case basis thus represents a departure from normal practice and is usually reserved for unique or unusual common carrier service offerings for which the carrier does not yet have sufficient experience to develop general rates. Rather than basing initial rates on averaged costs, carriers develop rates in response to each customer request for the service. Once sufficient knowledge is gained about the costs of the service, the Commission requires that the ICB rates be converted to averaged rates applicable to all customers.*

*See generally Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, 4 FCC Rcd 8634 (1989), on recon., 5 FCC Rcd 4842 (1990). The filing of an individual case basis rate does not affect the general availability of a service offering. Individual case basis rates are 'general available' if tariffs embodying these rates are filed and are available to all similarly situated customers. See id. at 8642 (citing Sea Land Services, Inc. v. ICC, 738 F.2d 1311, 1317 (D.C. Cir. (1990)))." (Emphasis supplied)

The Bureau's language thus plainly concerns a typical situation where an ICB offering by a common carrier becomes a common carrier service after being held out to all customers. This is entirely consistent with the D.C. Circuit's Dark Fiber decision, as well as with the Commission's own precedent.

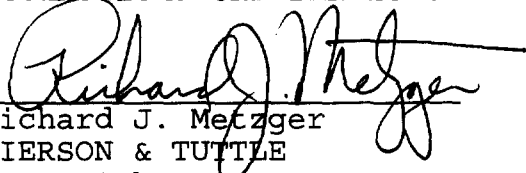
CONCLUSION

For the foregoing reasons ALTS requests that Bell Atlantic's Petition for Clarification be rejected. If any need for clarification were to exist -- and ALTS maintains there is none - - it would be better addressed in the Dark Fiber remand proceeding.

Respectfully submitted,

**ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

Heather Burnett Gold
President
Association for Local
Telecommunications Services
1200 19th Street, N.W.
Suite 607
Washington, D.C. 20036

By: 
Richard J. Metzger
PIERSON & TUTTLE
1200 19th Street, N.W.
Suite 607
Washington, D.C. 20036
(202) 466-3044 (v)
(202) 466-3055 (f)

Its Attorneys

August 29, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 1994, copies of the foregoing
COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS
SERVICES were served via hand delivery* or first class mail, postage prepaid, to the parties
on the attached service list.



Susan Willcox Dykeman

A. Richard Metzger*
Acting Chief
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W.
Room 500, Stop Code 1600
Washington, DC 20554

David Nall *
Acting Chief
Tariff Division
Federal Communications
Commission
1919 M Street, N.W.
Room 518, Stop Code 1600C
Washington, DC 20554

International Transcription
Service*
1919 M Street, N.W.,
Room 246
Washington, DC 20544

Lawrence Katz
Attorney for the Bell Atlantic
Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

Floyd S. Keene
Briam Gilomen
Ameritech
Room 4H64
2000 West Ameritech Cntr Dr.
Hoffman Estates, IL
60196-1025

Patrick A. Lee
Edward E. Niehoff
The NYNEX Telephone
Companies
120 Bloomingdale Road
White Plains, NY 10605

**William Barfield
Richard M. Sbaratta
BellSouth Telecommunications
4300 Southern Bell Center
675 Peachtree Street, N.E.,
Atlanta, GA 30375**

**Duward D. Dupre
Richard C. Hartgrove
Michael J. Zpevak
Southwestern Bell Tel. Co.
1010 Pine Street, Room 2114
St. Louis, MO 63101**

**James P. Tuthill
Jeffery B. Thomas
Pacific Bell and Nevada Bell
140 New Montgomery Street
Room 1522-A
San Francisco, CA 94105**

**Stanley J. Moore
Attorney for Pacific
& Nevada Bell
1275 Pennsylvania Ave., N.W.
Washington, DC 20004**

**Lawrence E. Sarjeant
Kathryn Marie Krause
Attorneys for
U S West Communications Inc
1020 19th Street, N.W.
Suite 700
Washington, DC 20036**

**Gail L. Polivy
Attorney for GTE Service
Corp.
1850 M Street, N.W.
Suite 1200
Washington, DC 20036**

Ward W. Wueste, Jr.
Richard McKenna
HQE3J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

James S. Blaszak
Francis E. Fletcher, Jr.
Gardener, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, DC 20005

Leon M. Kestenbaum
Marybeth M. Banks
1850 M Street, N.W.
11th Floor
Washington, DC 20036

Robert A. Mazer
Nixon, Hargrave, Devans
& Doyle
One Thomas Circle, N.W.
Suite 800
Washington, DC 20005

Andrew D. Lipman
Eugene A. DeJordy
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Josephine S. Trubeck
Michael J. Shortley, III
Attorney for
Rochester Tel. Corp.
1805 South Clinton Avenue
Rochester, NY 14646

Francine J. Berry
Robert J. McKee
Peter H. Jacoby
Attorneys for AT&T
Room 3244J1
295 North Maple Ave.
Basking Ridge, NJ 07920

Robert C. Atkinson
Senior Vice President
Regulatory and External
Affairs
Teleport Communications
Group, Inc.
One Teleport Drive
Staten Island, NY 10311

Rochelle D. Jones
Division Staff Manager -
Regulatory Affairs
Southern New England
Telephone Co.
227 Church Street
New Haven, CT 06510

Thomas E. Taylor
David W. Hills
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, OH 45202

Paul R. Schwedler
Asst Chief Regulatory Counsel
Defense Information Systems
Agency
701 S. Courthouse Road
Arlington, VA 22204

Joseph W. Miller
WilTel
Suite 3600
P.O. Box 2400
One Williams Center
Tulsa, OK 74102

Michael F. Hydock
Federal Regulatory Affairs
MCI Communication corp.
1801 Pennsylvania Ave., N.W.
Washington, DC 20006

Michael L. Glaser
Joseph P. Benkert
Hooper & Kanouff
Counsel for Teleport Denver
1810 Wynkoop Street
Suite 200
Denver, CO 80202-1196

Randall B. Lowe
John E. Hoover
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, DC 20005-2088

James B. Gainer
Ann Henkener
Assistant Attorney General
Ohio Public Utilities
Commission
180 East Broad Street
Columbus, OH 43266-0573

W. Richard Morris
United Telecomm, Inc.
PO Box 11315
Kansas City, MO 64112

Jay C. Keithly
United Telecomm, Inc.
1850 M Street, NW
Suite 1100
Washington, DC 20036

James Ogg
Centel Corp.
30 S. Wacker Drive
Chicago, IL 60606-6604

Cindy Z. Schonhaut
MFS Communications
Company, Inc.
3000 K Street, NW
Suite 300
Washington, DC 20007